



DEPARTMENT OF HEALTH AND HUMAN SERVICES

ADMINISTRATION FOR CHILDREN AND FAMILIES
Office of the Assistant Secretary, Suite 600
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

December 13, 2012

The Honorable Daniel R. Levinson
Inspector General
U.S. Department of Health and Human Services
330 Independence Avenue, SW
Washington, DC 20201

Dear Inspector General Levinson:

I am writing to respond to the Office of Inspector General (OIG), Management Implication Report (MIR) 12-0005, which contains recommendations for ACF regarding the Child Care and Development Fund (CCDF) program. CCDF is a block grant program administered by State, Tribal and Territorial grantees that provides financial assistance to eligible low-income families to help pay for child care and funding to improve the quality of child care. The MIR is based on findings from an OIG investigation in the State of Oregon regarding the screening of child care providers serving children receiving CCDF assistance.

ACF takes seriously our responsibility to ensure both the fiscal integrity and proper functioning of the programs under our jurisdiction, especially with regard to ensuring the health and safety of the children and families we serve. As such, we appreciate the OIG bringing to our attention the issues raised in your report and look forward to working in partnership with you to address any identified vulnerabilities in the CCDF program.

ACF agrees with the first two recommendations made in the OIG report and has already taken several actions in these areas. With regard to the 3rd recommendation, ACF will examine the issues raised in the MIR and whether it is warranted to propose a regulatory change pursuant to the recommendation.

ACF Response to MIR Recommendations

1. Require all CCDF child care providers to undergo background checks.

ACF agrees with the OIG recommendation that child care providers caring for children receiving CCDF assistance should be required to have a comprehensive criminal background check. Comprehensive background checks are a basic safeguard essential to protect the safety of children in child care and minimize children's risk of abuse and neglect. Parents need to know that child care providers and others who come into contact with their children do not have a record of violent offenses, sex offenses, child abuse or neglect, or have not engaged in other behaviors that should disqualify them from caring for children.

It is important to note that ACF's authority in the CCDF program is over State, Tribal, and Territorial grantees – not individual child care providers that serve children receiving CCDF assistance. Therefore, any policy change implementing this recommendation would mandate that *States require* CCDF child care providers to undergo background checks. Under current law, States are required to have in place, either under State, local or tribal law, "requirements designed to protect the health and safety of children that are applicable to child care providers of services for which [CCDF] assistance is provided." (45 C.F.R. § 98.41(a)) Although CCDF regulations do specify that such requirements shall include "building and physical premises safety," there is nothing under current law that speaks directly to background checks for providers.

ACF has taken a number of administrative and other actions to improve program policy in this area. As you note in your report, the Office of Child (OCC) released an Information Memorandum in September of 2011 recommending that CCDF Lead Agencies implement comprehensive criminal background checks for child care providers serving children receiving CCDF subsidies as part of minimum health and safety requirements. (CCDF-ACF-IM-2011-05) In addition, OCC recently revised the CCDF Plan to collect more information about grantee policies with regard to background checks. (CCDF-ACF-PI-2011-03)

ACF has also developed a proposed rule to improve health and safety and the quality of child care for children receiving CCDF assistance. One of the proposed changes would require States to conduct comprehensive background checks on child care providers that include use of fingerprints for State checks of criminal history records, use of fingerprints for checks of Federal Bureau of Investigation (FBI) criminal history records, clearance through the child abuse and neglect registry, and clearance through sex offender registries. Because conducting comprehensive background checks for the CCDF program would be a new requirement for States, it must be implemented through notice and comment rulemaking.

Beyond administrative actions, the President's FY 2013 budget request asks for legislative reauthorization of the CCDF program, including reforms to improve health and safety in child care settings. Linda Smith, ACF's Deputy Assistant Secretary and Inter-Departmental Liaison for Early Childhood Development, recently testified before a Senate Health, Education, Labor and Pensions (HELP) subcommittee for a hearing on reauthorization of the child care program. In that testimony, Ms. Smith highlighted that, "some states lack of basic requirements, such as comprehensive criminal background checks..." is an area of concern and something that should be considered as part of CCDF reauthorization.

2. Work with the States to develop minimum documentation standards for CCDF child care provider applicants.

ACF agrees with the recommendation to work with States to develop minimum documentation standards for ensuring that child care providers serving children receiving

CCDF assistance meet health and safety and other applicable State regulatory requirements.¹

As a block grant, States have significant flexibility to establish rules, policies, and procedures for administering their own child care assistance programs that are funded, in part, by CCDF funds. One of the goals of CCDF provided in statute is “to allow States maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within such State.” (42 U.S.C. § 9858(b)(1)) CCDF regulations establish broad parameters for a child to be considered eligible for assistance and require providers serving children receiving assistance to meet minimum health and safety standards. States are provided significant flexibility in determining specific procedures for ensuring that children and families meet eligibility requirements and that child care providers serving CCDF children meet requisite health and safety requirements, as well as any applicable State licensing requirements.

Given this flexibility, ACF works proactively with States to provide technical assistance, guidance and recommendations about best practices in certain areas, such as appropriate documentation standards, as part of larger efforts to improve program integrity.

For example, OCC issued a Program Instruction in August of 2010 that provides guidance to grantees on preventing waste, fraud, and abuse in the CCDF program. (CCDF-ACF-PI-2010-06) This guidance includes a recommendation that Lead Agencies should use a unique identifier to crosscheck information provided by parents applying for CCDF assistance, as well as child care providers, across State and national data systems to automatically flag potential improper payments. OCC has also developed a program integrity webinar series to highlight specific issues and provide States with an opportunity to share models and best practices. In addition, as part of recent changes to the monthly case-level administrative data report (ACF-801)², States and Territories are now required to report a unique case identifier for each child care provider that delivers CCDF services. This identifier can help assist with program integrity efforts.

This OIG recommendation includes reference to a GAO report indicating that obtaining a Social Security Number (SSN) is key part of State efforts to verify a child care provider's identity. ACF believes that alternate unique identifiers for child care providers, such as the Federal Employer Identification Number (FEIN), can also work effectively in the absence of an SSN. In addition, there are means other than SSNs for obtaining identification necessary to perform a criminal background check, such as through fingerprints.

Finally, we agree, as OIG stated in the recommendation, that there is some question as to the legal authority of States to require child care providers to submit an SSN. The Privacy Act forbids State or local governments from denying to “any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social

¹ Note that child care providers are not “applicants” or beneficiaries in the CCDF program. Instead, CCDF provides assistance to children from eligible low-income families.

² Available online at: http://www.acf.hhs.gov/programs/ccb/report/formhelp/acf801/801_instructions.htm

security account number.” (42 U.S.C. § 552a note) There are exemptions to this prohibition, including when disclosure is required by Federal statute, however, nothing in CCDF statute or regulations addresses collection of SSNs of child care providers.

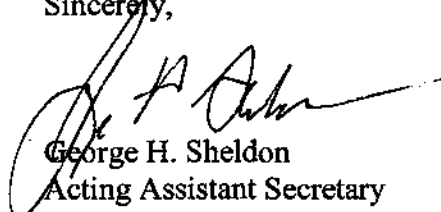
3. **Consider whether to revise the definition of an “eligible child care provider” at 45 CFR 98.2 to ensure that ACF guidance is consistent with other Federal laws and regulations.**

In this recommendation, OIG asks ACF to consider amending the definition of “eligible child care provider” to include reference to 8 U.S.C. § 1324(a)(1)(A), which states that “it is unlawful for a person or other entity to hire... for employment an alien knowing the alien is an unauthorized alien...”

CCDF regulations already require States to administer programs that comply with “all other applicable Federal laws and regulations.” (45 CFR § 98.15(a)(1)) However, ACF will examine the issues raised in the MIR and whether it is warranted to propose a regulatory change that would specifically reference 8 U.S.C. 1324(a)(1)(A) or other statutory provisions.

Again, ACF appreciates the opportunity to provide responses to the MIR and welcomes any further questions that OIG may have regarding these issues. Please direct any follow-up inquiries to our Office of Legislative Affairs and Budget OIG liaison, Scott Logan at (202) 401-4529.

Sincerely,



George H. Sheldon
Acting Assistant Secretary
for Children and Families